THE KEOKUK AND HAMILTON BRIDGE COMPANY,
Plaintiff in Error,
v.
THE PEOPLE OF THE STATE OF ILLINOIS.

No. 176.

BRIEF OF PLAINTIFF IN ERROR IN REPLY.

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IN THE

Supreme Court of the United States.

OCTOBER TERM, 1898.

THE KEOKUK AND HAMILTON BRIDGE COMPANY,
PLAINTIFF IN ERROR,
v.
THE PEOPLE OF THE STATE OF ILLINOIS.
No. 175.

BRIEF OF PLAINTIFF IN ERROR IN REPLY.

I.

The brief of the defendants in error asserts that the Bridge Company, the plaintiff in error, claims that the dividing line between Illinois and Iowa is the middle of the Mississippi river, measuring from shore to shore.

No such claim is made. On the contrary, the claim is that the dividing line between the States as adjudicated by this court is the "middle of the main navigable channel" of the river.

Iowa *v.* Illinois, 147 U. S. 13.

It is further claimed that in pursuance of the order of this court the said line was ascertained and designated on the bridge in question by the commissioners appointed by this court upon the suggestion and stipulation of both States.

To make perfectly plain the contention of the company it is necessary, first, to understand the assessment. The assessment-book, given in evidence by the State, shows, pages 38 to 40 (R. 24), that the approach to the bridge and part of the bridge were assessed together. After describing by courses and distances the approach, the east end of the bridge is reached and the assessment proceeds: "and thence continuing the same course along the center line of said bridge 1,565 feet to the State line between the States of Illinois and Iowa" (R. 24).

It is thus apparent, and, indeed, is conceded, that Illinois taxed 1,565 feet of the bridge from the east end thereof.

The contention is that about 600 feet of the bridge so taxed were situated beyond the limits of Illinois and in Iowa.

The suit in this court between the States was given in evidence (R. 147–175).

The order of this court appointing commissioners to carry into effect its decree required them (R. 168) "to locate and mark the State line between the States of Iowa and Illinois, pursuant to the opinion of this court in this cause, at each of the nine bridges across the Mississippi river between these States, and inasmuch as there is an emergency existing therefor, it is ordered that said commissioners proceed at once to ascertain and mark the boundary line between said States at the Keokuk and Hamilton bridge and report at once their action in that regard before proceeding to ascertain the line or mark the same at the other bridges. . . ."

The report of the commissioners, with an accompanying plat, was filed in this court March 30, 1893 (R. 171).

The line as designated and marked on the bridge, as shown by the plat, is a few feet east of the sixth pier, counting from the east end. The length of the spans from centre to centre of piers is given on the plat, and the distance of the line as marked on the bridge to the east end of the bridge is thus shown to be about 999 feet 4 inches, measuring to the centre of the sixth pier. It is a little less, say thirty or forty feet, because the line as marked is a little east of the sixth pier (see plat, R. 171). Now the assessment is for 1,565 feet of the bridge from the east end.

It is thus demonstrated that of the part of the bridge taxed, about six hundred feet are in the State of Iowa. This tax, we submit, is invalid as to the part of the bridge in Iowa, and the tax being a unit and void in part is void *in toto*.

Santa Clara Co. *v.* South. Pacific Railroad, 118 U. S. 394.

Philadelphia Fire Association *v.* New York, 119 U. S. 110.

Not only is the tax void for extraterritoriality, which affects the whole tax, but it is also void for the reason that it denies equal taxation to the company, first, by taxing its real estate beyond the limits of Illinois, and, secondly, as to the bridge both within and without those limits, by taxing the company three or four times as much as other owners of real estate. No other owner of real estate beyond the limits of the State is taxed therefor, and no other owner of real estate within the limits is assessed for more than one-fourth or one-third the value thereof. This happened in one of two ways. Either the

bridge was designedly and hence fraudulently assessed at a gross over-valuation, or the bridge, an instrument of commerce, was assessed not as property only, but also on account of its earning capacity as such instrument engaged in interstate business.

Such is the contention of the company. The federal questions are extraterritorial taxation in violation of the line as established by the enabling act of Congress of April 18, 1818, under which Illinois was admitted as a State, and inequality of taxation as shown by extraterritorial taxation and the valuation of the bridge at three or four times the property of other owners (R. 2, 3, 4, 9–16, 61–71). It may be said that the proposition that the dividing line between the States was conceded and indeed asserted by the court below to be the middle of the main channel of the river, and hence that the error of that court was one of fact only, that is, the application of a conceded rule to the subject-matter. In answer, we submit that the right of the company was to have "the title, right, privilege, or exemption" claimed not only admitted theoretically, but *enforced*, and that upon failure a writ of error lay from this court. The claim had as well not be conceded at all as conceded and then nullified by the action of the court. The trial of law and fact was by the court. The line as marked on the bridge was sustained by the report and plat of the commissioners returned to this court, and by the oral evidence of the commissioners, and other witnesses. Against the line so established was the evidence of witnesses who never sounded the river and who testified to what was a steamboat channel communicating with the United States canal on the Iowa side (R. 37, 41, 47, 49, 51, 54, 56). To deny the claim of the company the court had to overrule its own prior judgment between the same parties in 145 Illinois, 596, on the identical point (R. 198), and even held that

the commissioners in fixing the line measured from shore to shore and not from side to side of the main channel (R. 198, 199). This holding has no support in the evidence but is contradicted by the report, the plat, and the evidence of the commissioners. One of them, Meigs, swears that had they measured from shore to shore the line would have been *east* of the designated point on the bridge (R. 133, 134). It is evident that the evidence in behalf of the State was a clever device by local officers to defeat the action of the officers of this court. The report, it is submitted, fixed the line subject to the action of this court. The order of confirmation was struck out on motion of the State of Illinois (151 U. S. 238) and the report of commissioners appointed at the instance of both States has lain in this court for nearly six years without any opposition to confirmation on its merits. Such a report is convincing evidence and not lightly to be set aside as was done by the court below. An individual in the position of the State of Illinois could not be said to occupy enviable ground from a moral standpoint.

II.

The tax on the capital stock.

(*a*) The tax is upon the valuation of the capital stock made by the board of equalization. It is necessarily upon the property and assets, franchises and business of the company.

It is reached by making a valuation of all the corporate property of whatsoever kind, tangible and intangible, and then deducting the assessed value of the tangible property. The balance is the valuation of the capital stock (R. 147).

In the present case the whole bridge is taxed, the part

in Illinois as tangible property and the part in Iowa as capital stock. This is conceded and sought to be justified by the opposing brief. From the aggregate valuation of the corporate property the assessed value of the east approach and of the 1,565 feet of the bridge are deducted, but the west approach and the residue of the bridge in Iowa are not deducted, and hence taxed as capital stock. Thus the State of Illinois taxes real estate confessedly beyond her jurisdiction. If the question were new it might well be argued that the law of Illinois properly construed does not attempt to do this, but the decisions of the Supreme Court of the State relied on must, we admit, be accepted as showing the meaning of the State law.

Then is such a tax valid? May the State of Illinois tax real estate beyond her jurisdiction? In State Tax on Foreign-held Bonds, this court held: "The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business."

State Tax on Foreign-held Bonds, 15 Wall. 300, 319.

The right to tax the real estate in Iowa is in argument based on the fact that the first charter was granted by Illinois with power to consolidate, and that upon such consolidation with the corporation chartered by Iowa the real estate of the latter corporation in Iowa was, by some process not explained, brought within the jurisdiction of Illinois, although in fact it continued to be in Iowa, and although Illinois afforded and could afford no protection, the correlative of taxation, and although the theory necessarily involved double taxation.

The translation of the property from one State to the

other is attributed to the consolidation. But the articles of consolidation are not in evidence, neither is the charter of the company set out in the opposing brief. All we know is that there was a consolidation, and that thereafter the "location" of the company was Keokuk, in the State of Iowa.

It is submitted that the consolidation of corporations chartered by the different States did not have the effect claimed. The invalidity of the tax, so far as based on the Iowa real estate, would invalidate the whole tax.

(*b*) But the tax is not only void as a tax on the real estate in Iowa. It is also void as a charge on interstate commerce, and on franchises granted by the Federal Government.

Perhaps the main element entering into the valuation of capital stock is the business carried on.

The business here was interstate business—the transportation of persons and property from one State to the other.

Such a business is beyond State taxation. In the case of Henderson Bridge Co. *v.* Kentucky, it was held under the circumstances that the bridge was not an instrument of commerce.

Henderson Bridge Co. *v.* Kentucky, 166 U. S. 150.

In the present case the evidence shows that the only business carried on or that could be carried on was interstate. The bridge had and could have no other function.

Any doubt on this point is removed by the act of Congress of July 25, 1866, a copy of which is filed with our principal brief. This act shows that after the grant of the charter by Illinois and that by Iowa, the two companies were authorized by Congress to construct and maintain

the bridge, subject to the terms and restrictions mentioned. (See §§ 7 and 1, 2, 3.)

Thus the franchises of the company are not only derived from Illinois and Iowa, as assumed in the opposing brief, but also from the Federal Government. It is only necessary to read the act to be convinced that the bridge was intended to be an instrument of commerce, and, indeed, made such both in respect of transportation and as a commercial agency in navigation.

Pensacola Tel. Co. *v.* Western U. Tel. Co., 96 U. S. 1.

The act of Congress in the Henderson Bridge case, held to confer "no right or franchise on the company to erect the bridge or collect tolls for its use," was very different, being confined to making the bridge a post route.

Henderson Bridge Co. *v.* Kentucky, 166 U. S. 150, 154.

(*c*) The tax was on the franchises granted by Congress. Cases cited on page 19 of our principal brief.

III. The opposing brief, page 32 *et seq.*, takes the ground that there is no evidence to show consolidation or the terms thereof, and, indeed, that the company cannot set up the same as it was not mentioned in the return to the county clerk.

If there was no consolidation there is an end of the alleged right of the State of Illinois to tax the real estate in Iowa, the predicate of which right as held by the Illinois cases relied on is consolidation.

In the absence of consolidation, the exercise of the alleged right would only be more flagrant.

It is further contended that the company having in its return to the county clerk declared its capital was $1,000,000, authorized and paid up, is equitably estopped from showing that the valuation for a less amount is

illegal. But the company did no such thing. In compliance with law, it declared that $1,000,000, the authorized capital stock, had been paid up and all the shares issued (R. 138, 189). It further declared that the shares of stock had no market and no actual value. Now the duty of the board was to determine "the fair cash value of the capital stock, including the franchise." This plainly meant the value at the time of the assessment by the board; in other words, the present value.

The rule of the board was that if capital stock had a cash value as quoted by reliable commercial authority, such value was to govern the valuation. If, as here, there was no such value, the board was to be governed by the return and other information outside the return (R. 144, 145).

Respectfully submitted.

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No. 26.

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No. 26.

THE KEOKUK AND HAMILTON BRIDGE COMPANY, PLAINTIFF IN ERROR,

vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

BRIEF OF PLAINTIFF IN ERROR ON REARGUMENT.

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vs.

THE PEOPLE OF THE STATE OF ILLINOIS.

Brief of Plaintiff in Error on Reargument.

STATEMENT OF THE CASE.

The plaintiff in error, a corporation formed by the consolidation of the Keokuk and Hamilton, Mississippi, Bridge Company, a corporation of Iowa, and the Hancock County Bridge Company, a corporation of Illinois, mentioned in the act of Congress of 25th July, 1866, a copy of which is herewith filed, owns and maintains a bridge across the Mississippi river between Keokuk, in Iowa, and Hamilton, in Illinois, and has its main office at Keokuk (R., 1, 2, 3, 17, 175, 176). The bridge is used entirely for commerce between the States of Iowa and Illinois, two

railroads, wagons, and passengers crossing from State to State, and is provided with a draw in aid of navigation. The business of the plaintiff in error consists in the maintenance of the bridge and its works by the management of the draw and the transportation of persons and property for hire from shore to shore (R., 82, 84, 85, 99, 106, 136, 137). This business is carried on by the authority of the above act of Congress.

The manifest purpose of this act is to regulate commerce upon a great navigable highway and between the States. The scheme of the act is far-reaching. It provides for the construction of nine bridges across the river, three between Illinois and Missouri, three between Illinois and Iowa, one between Wisconsin and Iowa, one between Wisconsin and Minnesota, and one at Kansas City. (See Act, §§ 1, 4, 5, 6, 7, 8, 9, 10, 11, in the appendix of this brief.)

The third section of the act declares that any bridge constructed under it shall be a lawful structure and shall be recognized and known as a post-route, upon which no higher charge shall be made for the transmission of the mails, troops, and munitions of war of the United States than the rate per mile paid for transportation on the railroads or public highways leading to the bridge. The first section, relating specially to the bridge at Quincy, Illinois, but applied by subsequent sections to all the other bridges, requires the party building the bridge to lay down railway tracks for the more perfect connection of "any railroads that are or *shall be constructed* to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge under the conditions and limitations hereinafter provided."

By the same section in case of litigation arising from any obstruction or alleged obstruction to the free navigation of the

river, jurisdiction is given to any district court of the United States in any State where the bridge or obstruction touches.

The second section relates to the manner in which the bridge shall be constructed. It provides that any bridge may, at the option of the builder, be built as a drawbridge, with a pivot or other form of draw or with unbroken and continuous spans. If the latter, the elevation of the bottom chord of the bridge shall be at least 50 feet above extreme high-water mark, at the point of location, and the spans shall not be less than 250 feet in length, and the piers shall be parallel with the current of the river, and the main span shall be over the channel and not less than 300 feet in length. If, on the other hand, the bridge shall be a drawbridge, it shall be a pivot drawbridge, with a draw over the main channel at an accessible and navigable point, and with spans of not less than 160 feet in length in the clear on each side of the central or pivot pier of the draw, and the next adjoining spans to the draw shall not be less than 250 feet, and said spans shall not be less than 30 feet above low-water mark nor less than 10 feet above extreme high-water mark, measuring to the bottom chord of the bridge, and the piers shall be parallel with the current of the river. The draw shall be opened promptly upon reasonable signal for the passage of boats whose construction does not admit of passage under the permanent spans except when trains are passing over the bridge, and in no case shall there be unnecessary delay in opening the draw during or after the passage of trains.

It is the seventh section, however, that grants to the two corporations which consolidated and thereby formed the plaintiff in error the power to build the bridge for taxes upon which this suit was brought. That section, in substance the same as the grants of power for other bridges, is as follows:

SEC. 7. *And be it further enacted*, "That the Keokuk and Hamilton, Mississippi, Bridge Company, a corporation ex-

isting under the laws of the State of Iowa, and the Hancock County Bridge Company, a corporation existing under the laws of the State of Illinois, be and are hereby authorized to *construct* and *maintain* a bridge over the Mississippi river between Keokuk, Iowa, and Hamilton, Illinois, of the same *character*, *description*, and *construction* as provided in this act for the bridges at Quincy and Burlington; and the said bridge, in *its use* and *operation*, shall be subject to the same restrictions that apply to said bridges at Quincy and Burlington by the terms of this act."

To summarize:

The Congress of the United States, having exclusive jurisdiction over the subject of commerce upon navigable waters and between the States, in the exercise of its authority deemed it proper that the different bridges mentioned in the act should be built and maintained. To that end it passed the above act, which on its face is a regulation of commerce. It declares that bridges shall be built and how many and where located, and confers upon the Federal courts jurisdiction of all litigation growing out of any obstruction or alleged obstruction of free navigation. It does not stop here, but prescribes the manner in which the bridges shall be built—that is, if of continuous spans, the width of the spans, and the height of the bridge, and the position of the piers, and if a drawbridge, the character and location of the draw, and the width and height of the spans, and the position of the piers.

Moreover, all the bridges are to be equipped with railway tracks for the more perfect connection of all railroads constructed or to be constructed to the river, over which tracks all trains shall be allowed to cross for reasonable compensation to be made to the owners of the bridges.

If the bridge is a drawbridge the further duty is devolved upon the owner to open the draw for the passage of boats without delay save that caused by the passage of trains. The right to reasonable compensation not expressed would neces-

sarily follow as an incident to the right to maintain the bridges given by the act.

The bridges are declared post-routes, and the cost of the transportation of mails, troops, and munitions of war over them is regulated.

By the thirteenth section of the act the right is reserved to alter or amend it so as to prevent or remove any material obstruction to navigation.

From what has been said it must be apparent that the bridges authorized by the act are the means provided by the sovereign authority to carry into effect its policy in respect of the navigation of the river and interstate commerce. Indeed, the act after acceptance became a contract whereby the Government said to the different builders of the bridges, If you will construct in pursuance of the act, you shall be allowed to maintain, charging therefor reasonable compensation, and subject only to the reserved power of alteration and amendment for the cause specified. Thus the existence and maintenance of the bridges are governmental operations, and the bridges the instruments for carrying on such operations, and neither such operations nor instruments are, it is submitted, subject to taxation by a State.

It is to be observed that while the two predecessors of the plaintiff in error were corporations existing under the laws of Iowa and Illinois, as mentioned in the seventh section of the act, the bridge was in fact constructed under and in pursuance of the authority of the act of Congress and subject to its restrictions and provisions. Hence the present case is not one of mere permissive use of navigable waters with the assent of the Federal Government, but of the exercise of new and independent authority on its part and with conditions, restrictions, and limitations prescribed by it. It is, in fact, as if a new charter had been granted by the Government.

After the passage of the above act the two companies con-

solidated. In 1871 the bridge was constructed by the plaintiff in error, with a draw, and has been since used and maintained.

An important element in the case is the boundary line between the States of Iowa and Illinois. The contention of the plaintiff in error is that more than 600 feet of the bridge situated in Iowa are taxed by the defendant in error.

By the treaty of peace concluded in 1763 by Great Britain, France, and Spain the boundary between the English and French territories was fixed as "a line drawn along the middle of the River Mississippi from its source to the River Iberville," in Louisiana.

Subsequently, by the treaty of Paris, in 1783, Great Britain ceded to the United States all possessions east of a "line drawn along the middle of the Mississippi river."

3 Jenkenson's Collection of Treaties, p. 410.

And still later, in 1803, France ceded to the United States all her territory west of said line.

8 Stat., 200.

The act of Congress enabling the people of Illinois to form a State constitution defines the boundaries of the State as follows: Starting in the middle of Lake Michigan, at north latitude forty-two degrees and thirty minutes, "thence west to the middle of the Mississippi river, and thence down along the middle of that river to its confluence with the Ohio river."

3 Stat., 428.

And the subsequent constitutions of Illinois of 1818, 1848, and 1870 defined the western boundary in the same way.

Ill. Rev. Stat., 1893, Hurd.

The enabling act of Missouri made the eastern boundary of that State the same line.

3 Stat., 545.

The courts of the States bordering on the Mississippi have frequently passed on this question and have fixed the boundary at the middle of the river.

Dunlieth & Dubuque Bridge Co. *vs.* County of Dubuque, 55 Iowa, 558.

Morgan *vs.* Reading, 3 Sm. & Mar. (Miss.), 366.

And this court has held the same.

Missouri *vs.* Kentucky, 11 Wall., 395.

Miss. & Mo. R. R. Co. *vs.* Ward, 2 Black, 485.

St. Louis *vs.* Rutz, 138 U. S., 226.

Jones *vs.* Soulard, 21 How., 41.

The Schools *vs.* Risley, 10 Wall., 91.

And the decisions of Illinois are to the same effect.

Middleton *vs.* Pritchard, 3 Scammon, 510.

Brooklyn *vs.* Smith, 104 Ill., 429.

Trustees of Schools *vs.* Schroll, 120 Ill., 509.

And these were followed by the case of Buttenuth *vs.* St. Louis Bridge Co., in which the supreme court of Illinois, while admitting the general doctrine as above stated, sought to define the middle of the channel or the middle of the river as "the space within which ships can and usually do pass."

Buttenuth *vs.* St. Louis Bridge Co., 123 Ill., 535.

The Supreme Court of Iowa had held that not the channel, but the middle of the bed of the river was the true boundary.

Dunlieth & Dubuque Bridge Co. *vs.* Dubuque, 55 Iowa, 558.

And in 1891, in order that the boundary between the two States might be settled, the State of Iowa filed a bill against the State of Illinois in this court; to which the latter filed a cross-bill, and this court, 3d January, 1893, decreed that

the boundary line was "the middle of the main navigable channel of the Mississippi river," and appointed a commission of three competent persons, named by the court upon the suggestion of counsel, to ascertain and designate the boundary line at the nine bridges across the river, one of which was the bridge of the plaintiff in error, and report to this court (R., 147, 167).

The record in that case was given in evidence in the present case and will be found at pages 147–175 of this record. The case is reported in 147 U. S., 1.

On the 7th of March, on the request and stipulation of the attorneys general of the two States, the court appointed as commissioners Montgomery Meigs, a United States civil engineer; John R. Carpenter, a United States inspector, who had been employed in the neighborhood for twenty-five years and most of that time on the Des Moines Rapids canal, by which boats went to Keokuk at low water, and Albert Wempner, a licensed pilot of over forty years' standing, and ordered them to proceed at once to ascertain and mark the boundary line between said States at the Keokuk and Hamilton bridge. The commissioners then took the required oath faithfully to perform the duties of the office (R., 167, 168, 169, 131, 127, 128, 134).

On the 30th of March, 1893, the report of the commissioners was filed. The report stated that—

"after qualifying under oath, as by law provided, and after most careful consideration of the decision of your honorable body in the case above mentioned, your commissioners proceeded, as directed by you, to survey and fix the boundary line between Iowa and Illinois on the Keokuk and Hamilton bridge at Keokuk, Iowa.

"Your commissioners find that the said boundary line is situated (1,041.65) ten hundred and forty-one and sixty-five one-hundredths feet easterly of the center of the draw-span, measured along the axis of the bridge and crossing the structure in a direction parallel to the piers of the bridge.

"Your commissioners also respectfully submit the accom-

panying plat showing their measurements along the bridge and to neighboring monuments as a matter of further record" (R., 171).

On the 10th of April, 1893, the report was confirmed.

Afterwards, 4th January, 1894, on motion of the State of Illinois, the order confirming the report was, on account of some irregularity of the notice, stricken out, and since then no step has been taken in the cause. The report is still before the court awaiting confirmation (R., 172–175).

The commissioners were examined in the trial of the case at bar and they testified how they proceeded to locate the center of the navigable channel.

The bed of the river at this point is flat rock (R., 108, 112, 115, 128, 131, 132, 134). They took the water at an ordinary stage, and in the middle of the main navigable channel they placed the mark upon the bridge (R., 129, 130, 133, 134, 136). As Meigs testified:

"We first inspected the river in the vicinity of the bridge on both shores; we consulted all the maps and references available, and, as we found, we were obliged to place the boundary in the middle; this implied that the channel should have two boundaries, equal distance from the line we were to locate. In considering this question we took into account the general navigability of the river; we consulted the records, which had been kept for years at Keokuk, of the stages of the water above low water, and we first fixed upon an average stage. This we found, from about twenty years' observation, to be six feet and one-tenth above low water. We fixed the line on the west side where this met the river bed before it was disturbed by construction, and we did the same on the east side. We found that a line ten hundred and forty-one feet easterly from the center of the pivot pier was half way between these points, and we marked that as the boundary.

"If you had marked the middle of the river, measuring from shore to shore, would the boundary line have been east or west of the point you marked as the middle of the main channel?

"If we had measured from the natural banks and located the boundary line half way between, it would have been somewhat east of its present position" (R., 133, 134).

And to like effect was the testimony of Wempner:

"We proceeded to find an average stage of water, between which points we found the main navigable channel of the river, and, measuring, found the eastern boundary of the channel thus defined to the westerly boundary of the channel thus defined, divided the distance in the middle, and marked the same upon the bridge at Keokuk ten hundred and forty-one and sixty-five hundredths feet east of the draw-pier of said bridge.

"How much of the main channel that you have described would be navigable at an ordinary state of water if all artificial obstructions were removed?

"All of it" (R., 136).

Testimony of Carpenter (R. 127-131).

On the 2d of May, 1895, the collector of taxes for the county in Illinois where the town of Hamilton is situated moved for judgment against certain delinquent tax-payers, the plaintiff in error among them. The tax was on the tangible property of the company, consisting in part, as described, of "a strip of land eighty feet wide, more or less, the center line of said strip of land commencing at a point in the center of Railroad avenue, in the plat of ground known as the Keokuk and Hamilton Ferry and Manufacturing Company's addition to the city of Hamilton, in said county, 707¾ feet south 72 degrees and 40 minutes east of the center of the east end of said bridge, thence running north 72 degrees 40 minutes west to the east end of said bridge; thence continuing the same course along the center line of said bridge ~~5,165 feet to the State line~~ between the States of Illinois and Iowa, including the slopes, walls, embankments, abutments, piers, and bridge structures and improvements thereon," assessed at $79,900, and also on the capital stock, assessed at $30,080 (R., 1, 2, 21, 22, 24).

The assessment of the capital stock, $30,080, was arrived

at by taking the estimated value of the capital stock and subtracting therefrom the value of the tangible property assessed in Illinois (R., 147).

The tax on the above-mentioned tangible property was $2,708.61, and on the capital stock $1,019.17 (R., 25).

The tangible property—that is, the bridge—was assessed at more than its value, and other real property in the same county was assessed at from one-fourth to one-third of its value (R., 58, 61–71, 9–17).

The plaintiff in error objected to the rendition of judgment, upon the grounds that the bridge was assessed at largely more than its fair cash value, when all other real estate was assessed at less than one-third of its fair cash value; that the entire business of the plaintiff in error was interstate commerce, not subject to taxation, and the tax on the capital stock was in effect a tax on such commerce; that the tax was assessed on the whole capital stock, when only part, if any, was assessable in Illinois; that the assessment was not made in accordance with the rules of the State board of equalization; and that over six hundred feet of the bridge was located in Iowa and not subject to taxation in Illinois (R., 21, 22, 140–146, 2, 3, 4).

The court, however, entered judgment for the full amount claimed; from which judgment an appeal was taken to the Supreme Court of Illinois, and the latter court having affirmed the judgment, a writ of error was sued out and the case brought here (R., 193, 194, 195, 199, 202, 204, 206).

ASSIGNMENT OF ERRORS.

There was error:

1. In holding that the bridge, a structure constructed and maintained in execution of the powers of the Government, was subject to taxation by the State.

2. In holding that the boundary between Iowa and Illinois was not as designated and marked on the bridge by the commissioners of this court, but was about six hundred feet west of that point, whereby to that extent a part of the bridge situate in Iowa was taxed.

3. In sustaining the assessment upon the bridge at a rate of valuation three or four times the rate at which other real estate was assessed.

4. In sustaining the said assessment when such increase could only be attributed to the assessment of the business carried on by the plaintiff in error, that of interstate commerce, or to fraud.

5. In holding that the State of Illinois could tax the capital stock of the plaintiff in error, the tax being a tax on interstate commerce.

6. In holding that the State of Illinois could tax the entire capital stock of the plaintiff in error, said plaintiff being a consolidated corporation formed by the consolidation of a corporation of Iowa and one of Illinois and having its principal office at Keokuk, in the State of Iowa.

7. In sustaining the tax on the capital stock based upon an assessment which was arrived at by taking the value of the entire capital stock and deducting therefrom the value of the part of the bridge in Illinois.

8. In sustaining the tax of the franchise to construct and maintain the bridge and fix the compensation for the use thereof granted by the Federal Government.

POINTS.

I.

The bridge, a structure constructed and maintained by the authority of the Federal Government and in execution of its powers and operations, is not subject to taxation by the State of Illinois.

The plaintiff in error is an agent to carry into effect powers of the Government in respect of commerce. The act of Congress is on its face a regulation of commerce, and the bridge an instrument whereby, and whereby alone, the agency can be performed. The agent cannot, if it would, employ other means, but its duties in carrying into effect a regulation of commerce are necessarily restricted to the bridge and its works. It is the bridge that is to be maintained, together with the railway tracks and draw.

It was entirely competent for the Government to construct and maintain at its own expense, and had this course been adopted no one would assert that the bridge, the property of the Government, would be subject to State taxation. Another course, however, and one equally within the discretion of the Government, was adopted. It chose to give authority to the two companies to construct the bridge at their expense and the right and correlative duty to maintain it and as part of it the railway and draw. The cost of the bridge and the works was defrayed by the two companies, and this large investment was to be made productive by the exercise of the right to maintain for reasonable compensation. This right to compensation is given in terms in respect of the railways (sec. 1) doubtless because they are not ordinarily part of a bridge, but with respect to the bridge proper, including the draw, the right to reasonable compensation is necessarily implied as incident to the right to maintain.

The manifest intention of Congress was that in return for the cost of constructing the bridge and its works in the manner prescribed by the act the companies should be entitled to the reasonable profits arising from their use and operation. It is true that the grant of power in the act is to corporations existing under the laws of the two States, but it is equally true that whatever the powers of these corporations under State legislation which do not appear in the record, such powers, relating, as they must, to commerce and navigation, were subject to the paramount authority of Congress, and that Congress, by the exercise of such authority, gave by the above act its own charter for the construction and maintenance of the bridge, upon such terms, conditions, restrictions, and limitations as it deemed proper. Instead of adopting the legislation of the two States, if any, Congress legislated *de novo*, and the only reference to any legislation of the States is that under it the two corporations had existence (sec. 7).

It simply adopted two State corporations as agents, reserving to itself the character of principal and defining the terms of the agency created by it.

The action of Congress was in no sense permissive only, but was the exercise of its independent will and authority.

The act, then, being a regulation of commerce, and the bridge with its works the exclusive instrument for carrying into execution such regulation, it follows that such instrument is not liable to State taxation. The bridge does not exist by virtue of State authority, but by the authority of the Federal Government. The main body of the bridge is over a navigable river, subject to the exclusive jurisdiction of the Federal Government, the abutments and piers resting on the territory of the States. It does not seem possible to distinguish this case from McCulloch *vs.* Maryland, 4 Wheat., 316, and other authorities holding that the means and operations of the Government are exempt from State taxation, as, for instance,

money borrowed (Weston *vs.* City of Charleston, 2 Pet., 467), certificates of indebtedness issued for money or supplies (The Banks *vs.* The Mayor, 7 Wall.), bills of credit issued for circulation (Bank *vs.* Supervisors, 7 Wall., 28), and other cases.

It is true that the act of Congress contains no express exemption from State taxation, but neither was there any express exemption in any of the above cases. There is, however, in the present case the strongest implication against taxation, for surely Congress never meant to take property of great value and subject the purchase-money or the stipulated compensation to the arbitrary power of the two States. As stated by Chief Justice Marshall (McCulloch *vs.* Maryland), the power to tax involves the power to destroy.

It may be urged that there is a distinction between the means employed by the Government and the property of agents employed by it, as this court has declared in Thompson *vs.* Pacific R. R. Co., 9 Wall., 591, and that whilst "taxation of the agency is taxation of the means, taxation of the property of the agent is not always or generally taxation of the means" (*id.*). On this principle, State taxation was held valid in the case cited, and perhaps in others, in the absence of express exemption by Congress.

But apply the principle to the present case. Here is no taxation of the property of the agent outside of the agency. Undoubtedly, such property is not exempt by reason of the agency, but is taxable unless declared exempt by the sovereign authority.

But here the property taxed is directly within the agency and the very thing upon which the agency is exercisable. All the powers and correlative duties of the agent are to be performed upon or by means of the bridge and its works. These constitute the instrument selected by the Government. Power is given to the agent to maintain this instrument, charging for that purpose reasonable compensation in the form of tolls, and this power involves

Henderson Bridge Co. v. Henderson City, 173 U.S. 592.
R. R. v. Peniston, 18 Wall. 5

the correlative duty of maintenance. This is the agency, relating not only to the powers and duties of the agent, but to the instrument also, the latter being as much within the import of the agency as the former. Now, if the Government, in the exercise of its legitimate powers, employs an agent not only to render service, but to render it upon a particular thing, can it be said that whilst the services cannot be taxed by a State, the thing may be?

Can this be done under the rule declared by Chief Justice Marshall, speaking for this court, in Weston *vs.* The City of Charleston, 2 Pet., 466, "that the States have no power, by taxation or otherwise, to retard, impede, burden, or in any manner control the operation of the constitutional laws enacted by Congress to carry into execution the powers vested in the General Government?"

In the present case, without the bridge and its works the services of the agents cannot be rendered.

If the State may tax, it may sell for non-payment. What, then, becomes of the regulation of commerce and its enforcement?

It is submitted that the present case is strictly within the above rule, being one in which "taxation of the property of the agent is taxation of the agency itself."

II.

Apart from any agency or relation to the Government, the tax upon the bridge is illegal and void, because the bridge, an instrument of commerce, is liable to taxation only as property and not as a commercial instrument, and because the rate of assessment was not equal and uniform, but from three to five times as great as the rate at which other similar property was assessed.

1. The bridge is an instrument of commerce (Covington Bridge Co. *vs.* Kentucky, 154 U. S., 204). It was built to facilitate commerce by the transportaton of persons and property from shore to shore, and is maintained for that purpose and that alone. Whilst other real estate in the vicinity is capable of many uses, the bridge is capable of but one—that is, as an instrument of commerce. To tax it is necessarily to tax the business carried on by means of it. Apart from the business, the bridge has little, if any, value.

2. Not only was the bridge taxed, but at a rate of from three to five times as great as other real estate in the county. The latter was assessed at from one-third to one-fifth of its value. This is proved by the assessors (R., 58, 61–71, 9–17). The bridge was assessed at $79,900—that is, 1,565 feet—but the evidence of engineers and bridge-builders shows that that part of the bridge, including the Illinois approach, was only worth about $70,300, and that a new structure at that time would only have been worth $96,000. The life of a bridge of this description is about fifty years, and this bridge was finished in 1871 (R., 83, 90, 99, 105).

It is no answer to this to say that the plaintiff in error has no just ground of complaint because others were assessed too low, if the assessment of the plaintiff in error was not itself excessive. The necessary effect of the undervaluation was to throw upon the plaintiff in error more than its just share of taxation.

Cummings *vs.* National Bank, 101 U. S., 153.

III.

The tax is extraterritorial; more than six hundred feet of the bridge assessed are beyond the western boundary of Illinois and in the State of Iowa.

To make perfectly plain this contention it is necessary to understand the assessment. The assessment book, given in evidence by the State, shows, pages 38 to 40 (R., 24), that the approach to the bridge and part of the bridge were assessed together. After describing by courses and distances the approach, the east end of the bridge is reached, and the assessment proceeds: "and thence continuing the same course along the center line of said bridge 1,565 feet to the State line between the States of Illinois and Iowa" (R., 24).

It is thus apparent, and, indeed, is conceded, that Illinois taxed 1,565 feet of the bridge from the east end thereof.

The contention is that about six hundred feet of the bridge so taxed were situated beyond the limits of Illinois and in Iowa.

The suit in this court between the States was given in evidence (R., 147–175).

The order of this court appointing commissioners to carry into effect its decree required them (R. 168) "to locate and mark the State line between the States of Iowa and Illinois, pursuant to the opinion of this court in this cause, at each

of the nine bridges across the Mississippi river between these States, and inasmuch as there in an emergency existing therefor, it is ordered that said commissioners proceed at once to ascertain and mark the boundary line between said States at the Keokuk and Hamilton bridge and report at once their action in that regard before proceeding to ascertain the line or mark the same at the other bridges." * * *

The report of the commissioners, with an accompanying plat, was filed in this court March 30, 1893 (R., 171).

The line as designated and marked on the bridge, as shown by the plat, is a few feet east of the sixth pier, counting from the east end. The length of the spans from center to center of piers is given on the plat, and the distance of the line as marked on the bridge to the east end of the bridge is thus shown to be about 999 feet 4 inches, measuring to the center of the sixth pier. It is a little less—say, thirty or forty feet—because the line as marked is a little east of the sixth pier. (See plat, R., 171.) Now, the assessment is for 1,565 feet of the bridge from the east end.

It is thus demonstrated that of the part of the bridge taxed, about six hundred feet are in the State of Iowa. This tax, we submit, is invalid as to the part of the bridge in Iowa, and the tax being a unit and void in part is void *in toto*.

Santa Clara Co. *vs.* South. Pacific Railroad, 118 U. S., 394.

Philadelphia Fire Association *vs.* New York, 119 U. S., 110.

Not only is the tax void for extraterritoriality, which affects the whole tax, but it is also void for the reason that it denies equal taxation to the company, first, by taxing its real estate beyond the limits of Illinois, and, secondly, as to the bridge both within and without those limits, by taxing the company three or four times as much as other owners of real estate. No other owner of real estate beyond the

limits of the State is taxed therefor, and no other owner of real estate within the limits is assessed for more than one-fourth or one-third the value thereof. This happened in one of two ways. Either the bridge was designedly and hence fraudulently assessed at a gross overvaluation, or the bridge, an instrument of commerce, was assessed not as property only, but also on account of its earning capacity as such instrument engaged in interstate business.

Such is the contention of the company. The Federal questions are extraterritorial taxation in violation of the line as established by the enabling act of Congress of April 18, 1818, under which Illinois was admitted as a State, and inequality of taxation as shown by extraterritorial taxation and the valuation of the bridge at three or four times the property of other owners (R., 2, 3, 4, 9–16, 61–71). It may be said that the proposition that the dividing line between the States was conceded and, indeed, asserted by the court below to be the middle of the main channel of the river, and hence that the error of that court was one of fact only—that is, the application of a conceded rule to the subject-matter. In answer, we submit that the right of the company was to have "the title, right, privilege, or exemption" claimed not only admitted theoretically, but *enforced*, and that upon failure a writ of error lay from this court. The claim had as well not be conceded at all as conceded and then nullified by the action of the court. The trial of law and fact was by the court. The line as marked on the bridge was sustained by the report and plat of the commissioners returned to this court, and by the oral evidence of the commissioners, and other witnesses. Against the line so established was the evidence of witnesses who never sounded the river and who testified to what was a steamboat channel communicating with the United States canal on the Iowa side (R., 37, 41, 47, 49, 51, 54, 56). To deny the claim of the company the court had to overrule its own prior judgment between the same parties in 145 Illinois,

Regarding the reference as the mere act of this court, the report was at least *prima facie* evidence.

Medsker *vs.* Bonebrake, 108 U. S., 66.
Tilghman *vs.* Proctor, 125 U. S., 136.
Callaghan *vs.* Myers, 128 U. S., 617.

But the reference was the voluntary act of the parties who, by stipulation, agreed to it and designated the referees or commissioners and had the reference made a rule of court (R., 167, 168).

Hence the report was in principle an award upon voluntary submission and conclusive, in the absence of excess of authority, fraud, or misconduct, none of which is pretended. It could not be questioned for mistake, nor elsewhere than in this court.

Kimberly *vs.* Arms, 129 U. S., 512.
Burchell *vs.* Marsh, 17 How., 344.
Boston Water Power Co. *vs* Gray, 6 Metc., 181.

596, on the identical point (R., 198), and even held that the commissioners in fixing the line measured from shore to shore and not from side to side of the main channel (R., 198, 199). This holding has no support in the evidence, but is contradicted by the report, the plat, and the evidence of the commissioners. One of them, Meigs, swears that had they measured from shore to shore the line would have been *east* of the designated point on the bridge (R., 133, 134). It is evident that the evidence in behalf of the State was a clever device by local officers to defeat the action of the officers of this court. The report, it is submitted, fixed the line subject to the action of this court. The order of confirmation was struck out on motion of the State of Illinois (151 U. S., 238), and the report of commissioners, appointed at the instance of both States, has lain in this court for nearly six years without any opposition to confirmation on its merits. Such a report is convincing evidence and not lightly to be set aside, as was done by the court below. An individual in the position of the State of Illinois could not be said to occupy enviable ground from a moral standpoint.

IV.

The tax on the capital stock was illegal and void.

(*a.*) The tax is upon the valuation of the capital stock made by the board of equalization. It is necessarily upon the property and assets, franchises, and business of the company.

It is reached by making a valuation of all the corporate property of whatsoever kind, tangible and intangible, and then deducting the assessed value of the tangible property in Illinois. The balance is the valuation of the capital stock (R., 147).

In the present case the whole bridge is taxed, the part in Illinois as tangible property and the part in Iowa as

capital stock. This is conceded and sought to be justified by the opposing brief. From the aggregate valuation of the corporate property the assessed value of the east approach and of the 1,565 feet of the bridge are deducted, but the west approach and the residue of the bridge in Iowa are not deducted, and hence taxed as capital stock. Thus the State of Illinois taxes real estate confessedly beyond her jurisdiction. If the question were new it might well be argued that the law of Illinois properly construed does not attempt to do this, but the decisions of the supreme court of the State relied on must, we admit, be accepted as showing the meaning of the State law.

Then is such a tax valid? May the State of Illinois tax real estate beyond her jurisdiction? In State tax on foreign-held bonds this court held:

"The power of taxation, however vast in its character and searching in its extent, is necessarily limited to subjects within the jurisdiction of the State. These subjects are persons, property, and business."

State Tax on Foreign-held Bonds, 15 Wall., 300, 319.

The right to tax the real estate in Iowa is in argument based on the fact that the first charter was granted by Illinois with power to consolidate, and that upon such consolidation with the corporation chartered by Iowa the real estate of the latter corporation in Iowa was by some process not explained brought within the jurisdiction of Illinois, although in fact it continued to be in Iowa, and although Illinois afforded and could afford no protection, the correlative of taxation, and although the theory necessarily involved double taxation.

The translation of the property from one State to the other is attributed to the consolidation. But the articles of consolidation are not in evidence, neither is the charter of the company set out in the opposing brief. All we know is that there was a consolidation, and that thereafter the

"location" of the company was Keokuk, in the State of Iowa.

It is submitted that the consolidation of corporations chartered by the different States did not have the effect claimed. The invalidity of the tax, so far as based on the Iowa real estate, would invalidate the whole tax.

(*b.*) But the tax is not only void as a tax on the real estate in Iowa. It is also void as a charge on interstate commerce and on franchises granted by the Federal Government.

Perhaps the main element entering into the valuation of capital stock is the business carried on.

The business here was interstate business—the transportation of persons and property from one State to the other.

Such a business is beyond State taxation. In the case of Henderson Bridge Co. *vs.* Kentucky, it was held under the circumstances that the bridge was not an instrument of commerce.

Henderson Bridge Co. *vs.* Kentucky, 166 U. S., 150.

In the present case the evidence shows that the only business carried on or that could be carried on was interstate. The bridge had and could have no other function.

Any doubt on this point is removed by the act of Congress of July 25, 1866, a copy of which is filed with our principal brief. This act shows that after the grant of the charter by Illinois and that by Iowa the two companies were authorized by Congress to construct and maintain the bridge, subject to the terms and restrictions mentioned. (See §§ 7 and 1, 2, 3.)

Thus the franchises of the company are not only derived from Illinois and Iowa, as assumed in the opposing brief, but also from the Federal Government. It is only necessary to read the act to be convinced that the bridge was

intended to be an instrument of commerce, and, indeed, made such both in respect of transportation and as a commercial agency in navigation.

Pensacola Tel. Co. *vs.* Western U. Tel. Co., 96 U. S., 1.

The act of Congress in the Henderson Bridge case, held to confer "no right or franchise on the company to erect the bridge or collect tolls for its use," was very different, being confined to making the bridge a post route.

Henderson Bridge Co. *vs.* Kentucky, 166 U. S., 150, 154.

A State cannot tax a franchise granted by the Federal Government.

California *vs.* Cent. Pac. R. R., 127 U. S., 1, 40, 41.

Tel. Co. *vs.* Texas, 105 U. S., 460.

Santa Clara County *vs.* South. Pac. R. R., 118 U. S., 394.

V.

The opposing brief, page 32 *et seq.*, takes the ground that there is no evidence to show consolidation or the terms thereof, and, indeed, that the company cannot set up the same, as it was not mentioned in the return to the county clerk.

If there was no consolidation there is an end of the alleged right of the State of Illinois to tax the real estate in Iowa, the predicate of which right as held by the Illinois cases relied on is consolidation.

In the absence of consolidation, the exercise of the alleged right would only be more flagrant.

It is further contended that the company having in its return to the county clerk declared its capital was $1,000,000, authorized and paid up, is equitably estopped from showing that the valuation for a less amount is

illegal. But the company did no such thing. In compliance with law, it declared that $1,000,000, the authorized capital stock, had been paid up and all the shares issued (R., 138, 189). It further declared that the shares of stock had no market and no actual value. Now, the duty of the board was to determine "the fair cash value of the capital stock, including the franchise." This plainly meant the value at the time of the assessment by the board; in other words, the present value.

The rule of the board was that if capital stock had a cash value, as quoted by reliable commercial authority, such value was to govern the valuation. If, as here, there was no such value, the board was to be governed by the return and other information outside of the return (R., 144, 145).

Respectfully submitted.

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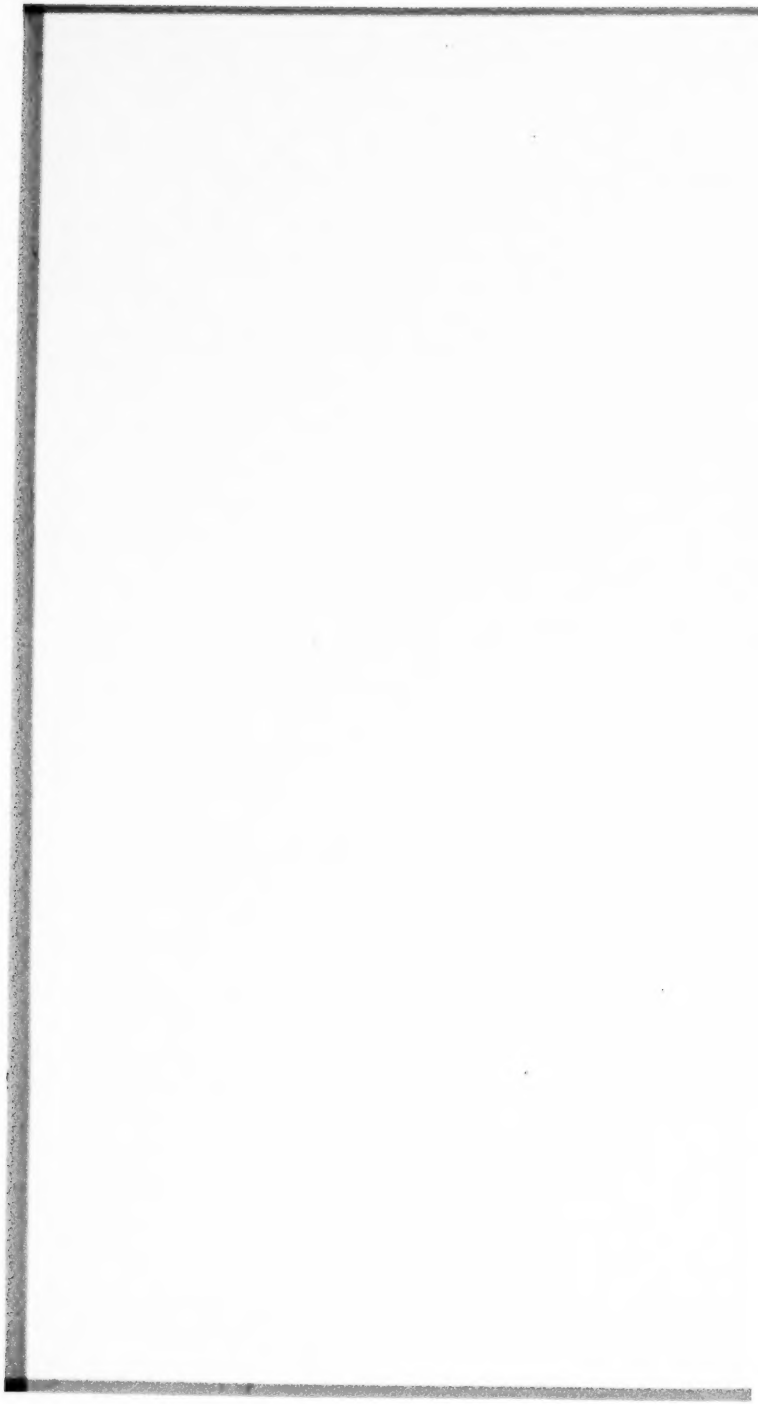

APPENDIX.

CHAP. CCXLVI.—An act to authorize the construction of certain bridges, and to establish them as post-roads.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That it shall be lawful for any person or persons, company or corporation, having authority from the States of Illinois and Missouri for such purpose, to build a bridge across the Mississippi river at Quincy, Illinois, and to lay on and over said bridge railway tracks, for the more perfect connection of any railroads that are or shall be constructed to the said river at or opposite said point, and that when constructed all trains of all roads terminating at said river, at or opposite said point, shall be allowed to cross said bridge for reasonable compensation, to be made to the owners of said bridge, under the limitations and conditions hereinafter provided. And in case of any litigation arising from any obstruction or alleged obstruction to the free navigation of said river, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches.

SEC. 2. *And be it further enacted*, That any bridge built under the provisions of this act may, at the option of the company building the same, be built as a drawbridge, with a pivot or other form of draw, or with unbroken or continuous spans. *Provided*, That if the said bridge shall be made with unbroken and continuous spans, it shall not be of less elevation in any case than fifty feet above extreme high-water mark, as understood at the point of location, to the bottom chord of the bridge, nor shall the spans of said bridge be less than two hundred and fifty feet in length,

and the piers of said bridge shall be parallel with the current of the river, and the main span shall be over the main channel of the river and not less than three hundred feet in length: *And provided also*, That if any bridge built under this act shall be constructed as a drawbridge, the same shall be constructed as a pivot drawbridge with a draw over the main channel of the river at an accessible and navigable point, and with spans of not less than one hundred and sixty feet in length in the clear on each side of the central or pivot pier of the draw, and the next adjoining spans to the draw shall not be less than two hundred and fifty feet; and said spans shall not be less than thirty feet above low-water mark, and not less than ten above extreme high-water mark, measuring to the bottom chord of the bridge, and the piers of said bridge shall be parallel with the current of the river: *And provided also*, That said draw shall be opened promptly upon reasonable signal for the passage of boats whose construction shall not be such as to admit of their passage under the permanent spans of said bridge, except when trains are passing over the same; but in no case shall unnecessary delay occur in opening the said draw during or after the passage of trains.

SEC. 3. *And be it further enacted*, That any bridge constructed under this act and according to its limitations, shall be a lawful structure, and shall be recognized and known as a post route; upon which, also, no higher charge shall be made for the transmission over the same of the mails, the troops, and the munitions of war of the United States, than the rate per mile paid for their transportation over the railroads or public highways leading to the said bridge.

SEC. 4. *And be it further enacted*, That it shall be lawful for the Chicago, Burlington and Quincy Railroad Company, a corporation whose road has been completed to the Mississippi river, and connects with a railroad on the opposite side thereof, having first obtained authority therefor from the States of Illinois and Iowa, to construct a railroad

bridge across said river, upon the same terms, in the same manner, under the same restrictions, and with the same privileges, as is provided for in this act in relation to the bridge at Quincy, Illinois.

SEC. 5. *And be it further enacted*, That a bridge may be constructed at the town of Hannibal, in the State of Missouri, across the Mississippi river, so as to connect the Hannibal and Saint Joseph railroad with the Pike County and Great Western railroads of Illinois, on the same terms and subject to the same restrictions as contained in this act for the construction of the bridge at Quincy, Illinois.

SEC. 6. *And be it further enacted*, That a bridge may be constructed across the Mississippi river between Prairie du Chien, in the State of Wisconsin, and North McGregor, in the State of Iowa, with the consent of the legislatures of Wisconsin and Iowa, on the same terms and subject to the same restrictions as are contained in this act for the construction of the bridge at Quincy, Illinois.

SEC. 7. *And be it further enacted*, That the Keokuk and Hamilton, Mississippi, Bridge Company, a corporation existing under the laws of the State of Iowa, and the Hancock County Bridge Company, a corporation existing under the laws of the State of Illinois, be and are hereby authorized to construct and maintain a bridge over the Mississippi river between Keokuk, Iowa, and Hamilton, Illinois, of the same character, description, and construction as provided in this act for the bridges at Quincy and Burlington; and the said bridge, in its use and operation, shall be subject to the same restrictions that apply to said bridges at Quincy and Burlington by the terms of this act.

SEC. 8. *And be it further enacted*, That the Winona and Saint Peter Railroad Company, a corporation existing under the laws of the State of Minnesota, is hereby authorized to construct and operate a railroad bridge across the Mississippi river between the city of Winona, in the State of Minnesota, and the opposite bank of the said river, in the State

of Wisconsin, with the consent of the legislatures of the States of Minnesota and Wisconsin; and said bridge by this section authorized is hereby declared a post route, and subject to all the terms, restrictions, and requirements contained in the foregoing sections of this act.

SEC. 9. *And be it further enacted*, That a bridge may be constructed and maintained across the Mississippi river, between Dunleith, in the State of Illinois, and Dubuque, in the State of Iowa, with the consent of the said States previously given or hereafter acquired, with the same privileges, upon the same terms, and under the same restrictions as are contained in this act for the construction of a bridge at Quincy, Illinois.

SEC. 10. *And be it further enacted*, That any company authorized by the legislature of Missouri may construct a bridge across the Mississippi river, at the city of Kansas, upon the same terms and conditions provided for in this act.

SEC. 11. *And be it further enacted*, That the "Saint Louis and Illinois Bridge Company," a corporation organized under an act of the General Assembly of the State of Missouri, approved February fifth, eighteen hundred and sixty-four, and an act amendatory of the same, approved February twentieth, eighteen hundred and sixty-five, and also confirmed in its corporate powers under an act of the legislature of the State of Illinois, approved eighteen hundred and sixty-four, or any other bridge company organized under the laws of Missouri and Illinois, be, and the same is hereby, empowered to erect, maintain, and operate a bridge across the Mississippi river, between the city of Saint Louis, in the State of Missouri, and the city of East Saint Louis, in the State of Illinois, subject to all the conditions contained in said act of incorporation and amendments thereto, and not inconsistent with the following terms and provisions contained in this act. And in case of any litigation arising from any obstruction or alleged obstruction to the

free navigation of said waters, the cause may be tried before the district court of the United States of any State in which any portion of said obstruction or bridge touches.

SEC. 12. *And be it further enacted*, That the bridge authorized by the preceding section to be built shall not be a suspension bridge, or drawbridge, with pivot or other form of draw, but shall be constructed with continuous or unbroken spans, and subject to these conditions: First, that the lowest part of the bridge or bottom chord shall not be less than fifty feet above the city directrix at its greatest span. Second, that it shall have at least one span five hundred feet in the clear, or two spans of three hundred and fifty feet in the clear of abutments. If the two latter spans be used, the one over the main steamboat channel shall be fifty feet above the city directrix, measured to the lowest part of the bridge at the center of the span. Third, no span over the water, at low-water mark, shall be less than two hundred feet in the clear of abutments.

SEC. 13. *And be it further enacted*, That the right to alter or amend this act, so as to prevent or remove all material obstructions to the navigation of said river by the construction of bridges, is hereby expressly reserved.

Approved July 25, 1866.

Rev. Stat. Ill. 1893, Hurd, chap. 120, § 3.

"Fourth. The capital stock of all companies and associations now or hereafter created under the laws of this State except those required to be assessed by the local assessors, as hereinafter provided, shall be so valued by the State board of equalization as to ascertain and determine respectively the fair cash value of such capital stock, including the franchise, over and above the assessed value of the tangible

property of such company or association; such board shall adopt such rules and principles for ascertaining the fair cash value of such capital stock as it may deem equitable and just, and such rules and principles when so adopted, if not inconsistent with this act, shall be as binding and of the same effect as if contained in this act, subject, however, to such change, alteration, or amendment as may be found from time to time to be necessary by said board: *Provided*, That in all cases where the tangible property or capital stock of any company or association is assessed under this act, the shares of capital stock of such company or association shall not be assessed or taxed in this State. This clause shall not apply to the capital stock, or shares of capital stock of banks organized under the general banking laws of the State, or under any special charter heretofore granted by the legislature of this State: *Provided further*, That companies and associations organized for purely manufacturing purposes, or for the mining and sale of coal, or for printing, or for publishing of newspapers, or for the improving and breeding of stock, shall be assessed by the local assessors in like manner as the property of individuals is required to be assessed."

§ 8:

"The State board of equalization shall assess the capital stock of each company or association, respectively, now or hereafter incorporated under the laws of this State, in the manner hereinbefore in this act provided. The respective assessments so made (other than of the capital stock of railroad and telegraph companies) shall be certified by the auditor, under direction of said board, to the county clerk of the respective counties in which such companies or associations are located, and said clerk shall extend the taxes for all purposes on the respective amounts so certified the same as may be levied on the other property in such towns, districts, villages, or cities in which such companies or associations are located."